

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

JOHN McKNIGHT WADE,

Petitioner,

v.

**MARK NOOTH, Superintendent,
Snake River Correctional
Institution,**

Respondent.

MOSMAN, J.,

No. 2:13-cv-00755-PK

OPINION AND ORDER

On February 1, 2016, Magistrate Judge Papak issued his Findings and Recommendation [41], recommending that Petitioner John McKnight Wade's Amended Petition for Writ of Habeas Corpus [19] should be DENIED and that no Certificate of Appealability should be granted. Petitioner objected [46] and Respondent Nooth responded [47]. I held oral argument on May 3, 2016.

DISCUSSION


The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon thorough review and after holding oral argument, I agree with Judge Papak's recommendation and I ADOPT IN PART the F&R [41] as it pertains to the denial of Petitioner's Amended Petition for Writ of Habeas Corpus [19] for the reasons stated on the record at oral argument. However, I find that reasonable jurists could reach a different conclusion and therefore allow for a Certificate of Appealability.

IT IS SO ORDERED.

DATED this 6th day of May, 2016.


MICHAEL W. MOSMAN
Chief United States District Judge